IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH OCTOBER 2006 / 14TH ASWINA 1928

WP(C).No. 40155 of 2003(E)

PETITIONER:

THE LIC OF INDIA STAFF CO-OPERATIVE BANK LTD. (NO.3314), JEEVAN PRAKASH, PATTOM, THIRUVANANTHAPURAM-4, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.BOBY MATHEW
SMT.K.MEERA
SRI.HARIPPAD K.R.C. PILLAI

RESPONDENTS:

1.KERALA STATE CO-OPERATIVE EMPLOYEES' PENSION BOARD, P.B.NO.85, KALA NIVAS,T.C.NO.27/156 157, CHINMAYA LANE, KUNNUMPURAM, NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM-1,REPRESENTED BY ITS SECRETARY.

*ADDL.R2.N.KRISHNAN, NARAYANASADANAM, T.C.7/184, KANJIRAMPARA P.O., THIRUVANANTHAPURAM.

*ADDL.R2 IS IMPLEADED AS PER THE ORDER DATED 8.6.2004 IN I.A.NO.6540 OF 2004.

R1 BY ADV. SRI.T.R.RAMACHANDRAN NAIR, SC,KSCEPB
R2 BY SR. ADVOCATE SRI.V.N.ACHUTHA KURUP
SRI.K.G.RENGANATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.40155 of 2003

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Dated: 6th October, 2006

JUDGMENT

The L.I.C. of India Staff Co-operative Bank Limited is the writ petitioner. The Kerala State Co-operative Employees' Pension Board is the 1st respondent and one N.Krishnan is impleaded as the additional 2nd respondent. The case of the petitioner briefly is that the petitioner-Bank had submitted the details regarding the pension contribution payable in respect of its employees to the 1st respondent, the Kerala State Co-operative Employees' Pension Board. The said details submitted as early as on 4.10.1995 included those of N.Krishnan, the additional 2nd respondent. The 1st respondent accepted the amount of pension contribution payable "subject to verification" pursuant to which the petitioner paid the same on 16.10.1995 and 18.10.1995. However, the 1st respondent did not conduct verification even at the time of retirement of N.Krishnan on 30.4.2002. Three months after the retirement of N.Krishnan the 1st respondent issued Ext.P6 demand asking the petitioner to pay Rs.53,994/- inclusive of compound interest for the delay in paying the pension contribution in respect of the said employee. This amount was demanded without taking into account the entire amounts paid by the petitioner, so submits the petitioner. The petitioner therefore

by Ext.P7 explanation submitted the factual details pointing out that only a further amount of Rs.14,867/- was payable by them. They claimed that against Ext.P8 pay-in-slip dated 27.9.2002 that amount was paid. Their grievance is that without considering Ext.P7 explanation and the amounts ppaid by the petitioner under Ext.P8 and earlier demands, the 1st respondent has issued fresh demance notice Ext.P11 demanding the very same amounts earlier demanded under Ext.P6 together with compound interest therein. The present demand is for a sum of Rs.71,272/-. The petitioner-Bank is threatened with revenue recovery proceedings in the event of not paying the amounts demanded under Ext.P11. It is challenging Ext.P11 that the present Writ Petition is filed by the petitioner.

2. The 1st respondent-Pension Board has filed a detailed counter affidavit justifying Ext.P11. Along with that counter affidavit they have produced Ext.R1(a) which is true copy of the pension fund due statement. It is contended therein that the calculation of pension fund as shown in detail in Ext.P6 is quite correct and therefore Ext.P6 is valid. As regards the pay-in-slip for Rs.14,867/- remitted by the petitioner on 27.9.2002 it is contended that the said payment was not received in the office of the 1st respondent and hence not taken into account of pension fund contribution of N.Krishnan while preparing

the pension fund due statement. All the Societies including the petitioner-Bank were directed to submit the pension fund remittance challan to the Pension Board on time. The petitioner-Bank did not submit the same. This is the fault of the petitioner-Bank. While preparing revised pension fund statement, the above payment also has been taken into account. It is then contended that Mr.N.Krishnan, the 2nd respondent was sanctioned only provisional pension of Rs.5268/- with effect from 1.5.2002 as per standing advice dated 8.10.2002. Mr.Krishnan is eligible for monthly pension of Rs.7635/-. He was granted provisional pension of Rs.5268/- as proportionate pension, i.e., 69% of pension fund contribution remitted by the Bank. The Pension Board is not in a position to sanction full pension even after one and half years of Krishnan's retirement as a sum of Rs.51,626/- remains to be remitted by the petitioner. The Pension Board being a self financing institution and the fund remittances being the only source of working capital of the institution, pension cannot be sanctioned unless the contribution is remitted in full by the Bank in question. The statements in Ext.P7, it is contended are not in accordance with the scheme and therefore the same cannot be hold good.

3. The 2nd respondent has also filed a detailed counter affidavit

virtually endorsing the stand of the 1st respondent. It is contended therein that the very action of the petitioner in not impleading the 2nd respondent as a respondent in the Writ Petition is mala fide. The 2nd respondent is getting only provisional pension though he retired from service voluntarily on 30.4.2002. He has not given regular pension only because the amount due had not been remitted by the petitioner-Bank towards pension contribution. The non-remittance of the amount is wilful. The objection is only to harass the additional 2nd respondent. Unless Ext.P11 is upheld the 2nd respondent will not get his pensionary benefits.

4. I have heard the submissions of Mr.Boby Mathew, learned counsel for the petitioner, Mr.T.R.Ramachandran Nair, Standing Counsel for the 1st respondent and Mr.V.N.Achutha Kurup, Senior Advocate, for the 2nd respondent.

5. Having considered the rival submissions in the light of the rival pleadings raised by the parties and the various documents placed on record, I am of the view that the 1st respondent can be directed to consider Ext.P7 after hearing the petitioner and the 2nd respondent but only subject to certain conditions. Accordingly, this Writ Petition will stand disposed of with the following directions:

The petitioner shall pay a sum of Rs.51,626/- made mention of

in Ext.R1(a) to the 1st respondent under protest within three weeks of the petitioner receiving a copy of this judgment. It is made clear that the above remittance will be subject to fresh orders to be passed on Ext.P7 by the 1st respondent. The petitioner shall pay all the benefits due to the additional 2nd respondent under the orders mentioned as Exts.P11 and P14 in W.P.C.No.28321 of 2003 within two months from the date of receipt of a copy of this judgment. Once it is seen that the above conditions are complied with by the petitioner, the 1st respondent will consider Ext.P7 objection submitted by the petitioner to Ext.P6 after hearing the petitioner and the additional 2nd respondent and pass fresh orders under communication to the petitioner and the additional 2nd respondent. Considering the grievance of the additional second respondent, there will be a direction that all the monetary benefits which becomes due on account of the above decision will be released to that respondent within one month of receiving a copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**